

December 20, 2002

The Honorable Kevin B. Sullivan
President Pro Tempore
The Honorable Moira K. Lyons
Speaker of the House of Representatives
State Capitol
Hartford, Connecticut

Dear Senator Sullivan and Representative Lyons:

I am writing to clarify the legal effect of repealing the Las Vegas Nights law in helping to stop additional casinos in our State.

As you know, the Indian Gaming Regulatory Act (IGRA) permits a federally recognized Indian Tribe to conduct Class III or casino gaming in a state "that permits such gaming for any purpose by any person, organization, or entity," 25 USCS §2710(d)(1)(b), if the Tribe enters into a compact with the state. No federal law creates a legal right for federally recognized Indian tribes to conduct casino gaming. Rather, IGRA relies first and foremost on state law regarding gambling, and mandates only that tribes can conduct the same type of gaming that any other person or entity is permitted to conduct under state law. Therefore, the state may determine as a matter of public policy what type of gambling, if any, it will allow within its borders, and therefore what type of gaming will be permitted under IGRA. In fact, the State of Idaho similarly banned Las Vegas Night-type charitable casino gambling in order to prevent casino-type gaming on federally recognized Indian Tribal land. See, Couer d'Alene Tribe v. Idaho, 842 F.Supp. 1268 (D.Idaho, 1994).

IGRA does not prohibit a state from changing its policy concerning gaming; rather, the law defers to the state in these matters. In enacting IGRA, Congress intended to strike a balance between federally recognized Indian tribes' interest in economic development and states' rights to determine their own policy on gaming. Therefore, the State of Connecticut has the right to reconsider its public policy to permit Las Vegas Nights and to clarify its criminal prohibition on commercial gambling in light of the serious ramifications of its current policy -- the proliferation of significant casino gambling in the State beyond the contemplation of the legislature when the Las Vegas Nights statute was originally enacted in 1972. Our legislature could not have known or intended in 1972 the profound and far-reaching effect that the Congress would later give the Las Vegas Nights provision when it adopted IGRA in 1983. The State's right and responsibility

December 20, 2002

Page 2

to alter its law and avoid unintended consequences -- serving the public interest -- should be accorded respect by Congress and the courts.

In 1991, the Mashantucket Pequot Tribe sought to negotiate a gaming compact with the State of Connecticut to operate a casino. The State refused to enter into such negotiations because State law expressly prohibited such gaming and therefore, it believed it was not required to negotiate a gaming compact. Conn. Gen. Stat. §53-278a et seq. Pursuant to IGRA, the Tribe then sued the State in federal court to compel it to negotiate a compact. The federal Second Circuit Court of Appeals held that the Mashantucket Pequot Tribe is entitled to engage in casino-type gaming because the State permitted such gaming through its Las Vegas Nights statute, even though that gaming was limited to charitable entities conducting fundraisers, with no cash prizes permitted, and all proceeds going to the charitable organization. Mashantucket Pequot Tribe v. State of Connecticut, 913 F.2d 1024 (2nd Cir. 1990). Ultimately, in accordance with IGRA, the United States Secretary of the Interior **imposed**, over the State's objection, certain gaming procedures that had been adopted by a federal mediator. After the federal government recognized the Mohegan Tribe, the State was compelled by the Mashantucket Pequot precedent to conclude a gaming casino compact on the same basis. Since the Second Circuit Court of Appeals' ruling in the Mashantucket Pequot case was based squarely on the law that permits Las Vegas Nights, the repeal of that law would remove the legal linchpin for any newly federally recognized Tribe to claim a right under IGRA to conduct casino gaming.

The existing procedures and compact regarding the Mashantucket Pequot and Mohegan Tribes' conduct of their casino gaming do not constitute a legal basis for the proposition that the State of Connecticut "permits" such gaming within the State. As noted above, the compacts were imposed on the State of Connecticut as a result of the Second Circuit Court of Appeals decision, based on State law as it existed at that time. A compact forced on the State does not constitute "permitting" such gaming, particularly when the legislature has made an explicit policy change to prohibit it by abolishing Las Vegas Nights.

Neither does the State's agreements with the Mashantucket Pequot and Mohegan Tribes to conduct slot machine gaming provide a legal basis for tribal casino gambling or slot machines by others. As indicated above, IGRA only allows federally recognized Tribes to conduct gaming that is generally permitted in the state. Under Connecticut law, slot machines are expressly prohibited. The Memoranda of Understanding (MOU's) with the Tribes regarding slot machines do not alter or amend State law, but rather are authorized by the federal procedures governing the Mashantucket Pequot and Mohegan gaming operations. Those MOU's resolved a legal dispute between the two Tribes and the State as to whether State law allowed slot machines, a fact recognized ten years ago by my office. Conn. Op. Atty. Gen. 93-4 (Letter to Thomas Ritter and Edward C. Krawiecki, 2/11/93). Indeed, the MOU's specifically recognize that slot machines are prohibited within the State of Connecticut.

December 20, 2002

Page 3

The clear intent of IGRA was to encourage states and tribes to resolve their disputes over gaming issues by agreement set forth in compacts. The intent of IGRA would be abridged if any previous agreements and compacts constrained present state authority to change its regulatory policy toward gaming. Such application of IGRA would discourage rather than encourage state-tribal agreements.

Finally, the Bureau of Indian Affairs' determination to recognize the Historic Eastern Pequot Tribe is under review by the Interior Board of Indian Appeals (IBIA). The Department of the Interior's own regulations provide that recognition of a tribe is not final until the IBIA has completed its review. Thus, repeal of the Las Vegas Nights statute prior to the conclusion of the IBIA's review should not provide a legal basis for the Eastern Pequots to claim a right to casino gaming based on a law no longer in effect. A federal district court has ruled that even federally recognized tribes cannot claim a right to casino gaming if a state repeals permitted gaming prior to the recognized tribes entering into a compact with the state. Couer d'Alene Tribe v. Idaho, 842 F.Supp. 1268 (D.Idaho, 1994).

I hope this information is helpful to you.

Very truly yours,

RICHARD BLUMENTHAL

c: The Honorable George Jepsen, Senate Majority Leader
The Honorable Louis Deluca, Senate Minority Leader
The Honorable David Pudlin, House Majority Leader
The Honorable Robert Ward, House Minority Leader

RB/RFK/sk